

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-220750

DATE: October 17, 1985

MATTER OF: International Shelter Systems, Inc.

## DIGEST:

1. Bid which took exception to a material requirement of an invitation for bids properly was rejected as nonresponsive.
2. Protest of specifications is untimely where protester's objection to specifications is first presented by means of a notation in its bid.

International Shelter Systems, Inc. (International), protests the rejection of its bid as nonresponsive and the award to another, higher bidder under invitation for bids (IFB) No. F04699-85-B0116, issued by the Department of the Air Force (Air Force) for the supply of a prefabricated building. We dismiss the protest.

The IFB specifications noted that the "Channel" or "Zee" sections of the building, which are asymmetrical, have an inherent tendency to twist or roll under load. Accordingly, the specifications required that purlins be installed either face-to-face or back-to-back to counter such forces.

International, however, relying upon assurances from the manufacturer of the prefabricated building which it was offering that the loads which the building was designed to meet would not cause twisting or rolling, included in its bid a note that:

"[o]ur design will include certified engineering calculations--face-to-face and/or back-to-back purlins not required."

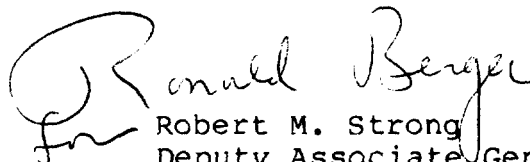
The Air Force subsequently rejected International's bid as nonresponsive to the specifications and made award to another, higher bidder. International thereupon filed this protest with our Office.

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To be responsive, a bid as submitted must represent an unequivocal offer to perform the exact thing called for in the solicitation such that acceptance of the bid would bind the contractor to perform in accordance with the solicitation's material terms and conditions. Power Test, Inc., B-218123, Apr. 29, 1985, 85-1 C.P.D. ¶ 484. Since International took exception in its bid to a material solicitation requirement, its bid properly was rejected as nonresponsive. Eclipse Systems, Inc., B-216002, Mar. 4, 1985, 85-1 C.P.D. ¶ 267 (bid properly found nonresponsive where it indicated that design of offeror's product eliminated the solicitation requirement for gaskets); see Power Test, Inc., B-218123, supra, 85-1 C.P.D. ¶ 484 at 2-3.

To the extent that International questions whether the specifications unduly restricted competition or exceeded the agency's minimum needs because they contained an unnecessary design requirement, its protest to our Office was untimely. Protests which are based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to bid opening in order to be timely. 4 C.F.R. § 21.2(a)(1) (1985). Moreover, we note that even if we were to consider the notation in its bid to be a "protest" to the agency, we have previously held that a protest of an apparent impropriety in a solicitation which is first submitted with the protester's bid is untimely. Power Test, Inc., B-218123, supra, 85-1 C.P.D. ¶ 484 at 3; Avitech Inc., B-214749, Sept. 17, 1984, 84-2 C.P.D. ¶ 297.

The protest is dismissed.

  
Robert M. Strong  
Deputy Associate General Counsel